



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/00562/2019
(V)

THE IMMIGRATION ACTS

**Heard Remotely by Teams via Field
House
On 15th June 2021**

**Decision & Reasons
Promulgated
On 24th June 2021**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**BP
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, of Counsel, instructed by Farani Taylor Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Interpretation: Ms S Dutta in the Hindi language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India born in 1970. She arrived in the UK as a visitor in June 2006, and overstayed when her leave to enter expired in December 2006. She made an asylum application to regularise her stay in June 2012, this was certified and refused. She made further representations in June 2012, and July 2013 which were refused as a fresh claim in November 2017. A judicial review of that decision resulted in it being withdrawn and a new asylum and human rights decision was made dated 26th November 2018. This appeal is against this decision refusing the appellant's asylum and human rights application. The appeal was dismissed on all grounds in a decision of the First-tier Tribunal Judge PB Conrath dated 24th February 2020
2. Permission to appeal was granted and I found that the First-tier Tribunal had erred in law for the reasons set out in my decision to be found at Annex A to this decision.
3. The matter comes before me now to remake the appeal. In my decision on error of law I preserved the findings at paragraphs 27, 28, 29 and part of paragraph 36 of the decision of the First-tier Tribunal which concern the violent history of the appellant's separated husband against her, his threats to his children, his visit to them and the fact that he would not pose a threat to her outside of her home area. The rest of the findings in the conclusion section at paragraphs 26 to 44 of the decision of the First-tier Tribunal were set aside.
4. This appeal starts from the position that the appellant has shown a real risk of serious harm in her home area of the state of Gujarat (which includes the village of Undhela in Matar where her separated husband lives and the city of Ahmedabad in Bapunagar where her parents and siblings lived) as conceded for the respondent at the error of law hearing, but not outside that area. The parties agreed before me that the issue which is determinative of this appeal is whether the appellant can reasonably be expected to find safety by internally relocating within India or whether this would be unduly harsh.
5. Further it was conceded by Mr Clarke that it would be unduly harsh for the appellant to have to relocate alone outside of her home area due to her being a woman with a history of being a victim of violence, her age, health, lack of education and any work experience outside of the home. As a result the only factual issue to be determined was whether the appellant's adult son, all other relevant male relatives having passed away, would assist her by relocating with her to another place in India such as Mumbai or Bangalore. Ms Jones confirmed that this was the only issue

remaining in the appeal in light of Mr Clarke's position, and that she did not argue that the appeal could succeed on Article 3 ECHR medical grounds or separately on Article 8 ECHR grounds related to the situation of the appellant in the UK.

6. It is clear from the decision of the First-tier Tribunal at paragraph 24 that this appeal is not advanced under the Refugee Convention, due to the lack of a Convention reason, but is a protection claim advanced claiming humanitarian protection and Article 3 ECHR protection on the basis of a real risk of serious harm to the appellant as a result of the criminal behaviour of a non-state actor, namely the appellant's husband. Nothing was said by Ms Jones, who was also counsel before the First-tier Tribunal, that led me to believe that this position had changed.
7. The hearing was held via a remote Teams hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. There were difficulties for Ms Jones and the interpreter in joining the hearing and generally in obtaining good visual reception at first, but by the time the hearing commenced properly with the appellant's oral evidence these difficulties had been resolved. There was a short adjournment at the start of the hearing to enable Mr Clarke to read the witness statements and expert report that had been before the First-tier Tribunal which he had been unable to access prior to that time. He confirmed that he was ready to proceed after this adjournment.

Evidence & Submissions – Remaking

8. The key evidence of the appellant from her statements and oral evidence in relation to the issue of internal relocation is as follows. She left school with no qualifications at the age of 16 years. She is now 51 year old. She has never worked outside of the home and has no skills to do so. Her father and two brothers are dead, as evidenced by their death certificates with translations in the bundle, and so her only male relative in India is her son who is 28 years old.
9. With respect to her son her evidence in her witness statement of 19th November 2019 and the supplementary witness statement prepared for the hearing in the First-tier Tribunal is that he refused to contact her or have any sort of relationship with her. She also says that she had been getting information from both of her children that she should not return to India due to the threats to her life from her husband by telephone and knew that her husband had recently got her telephone number by beating and terrorising her son.
10. In her statement for the hearing before the Upper Tribunal dated June 2021 and in oral evidence, the appellant says that she last had

contact with her son 6 or 7 months ago when she rang him from a neighbour/friend's phone. In this call he again made it clear he is unwilling to help her and wants her to stop bothering him, and that he is of the opinion that there is no relationship between them. After communicating this her son ended the call. She did not ask him for a statement to confirm this as he disconnected the call. She accepts that his attitude has changed since he made his statement in 2012 when he said he missed her and was afraid for her safety. She does not really know why but she believes that her husband has intervened to turn him against helping her and that her son is now afraid to do so as he is afraid of his father. Her son lives in the same village as his father, Undhela in Gujarat. She believes that he works but does not know what type of job he does. She believes that he was educated until the age of 21 or 22 years in the city of Ahmedabad. Her recollection is that she last saw her son when he was 10 or 11 years old, and his upbringing up until that age had been shared between herself and her parents/ his maternal grandparents, and after that time he lived with his maternal grandparents full time.

11. The appellant says she feels she would be vulnerable and her life would be at risk if she were to internally relocate in India because she would be a lone woman with no male family member. She says that it would further not be reasonable for her to have relocated because she would have no accommodation or ability to work to pay rent, and is very unwell and takes a large number of medications for a number of physical and mental health conditions including depression, kidney disease, respiratory problems, hypertension, and TB which is currently being treated with antibiotics. These conditions are corroborated by her GP notes and medical letters in the bundle.
12. In a statement dated 14th August 2012 the appellant's son who, at that time, lived in Ahmedabad in Gujarat with his grandparents, sister and orphaned nieces explains that he had also suffered domestic violence in the form of threats to kill and beatings from his father. He states that he is afraid that his father would cause his mother serious harm or death and although he misses her very much he understands that she cannot return to India, and asks that she be granted permission to stay in the UK.
13. Mr Clarke for the respondent relied upon the reasons for refusal that the appellant could find safety in India by internally relocating away from her violent separated husband to a large city such as Mumbai or Bangalore. He accepts that the suggestion that she could access shelters for victims of domestic violence is not reasonably supported by the country of origin materials. Instead Mr Clarke submits that the appellant could internally relocate by moving away from her home area with her son, who is now 28 years old. It is not therefore accepted that the appellant would not have male support

if she were to return to India. Mr Clarke accepted that without her son it would be unduly harsh for the appellant to internally relocate, but submitted that it was not credible that her son was not willing to assist her. This was because there was no evidence from him or credible explanation from the appellant as to why her son had changed from the position he expressed in 2012, some 9 years ago, of support and missing his mother to now being unwilling to assist her in any way. It was not credible he was taking his father's side as only 7 or 8 months prior to the hearing in the First-tier Tribunal in November 2019 he had been violent to him and demanded money from him. India is a vast country of 29 states and 1.3 billion people and it is not credible the appellant's son would be afraid of his father in another part of India, particularly as the preserved findings of the First-tier Tribunal include that there is no risk to the appellant outside her home area. The expert report states that the appellant's son is unlikely to relocate with the appellant, but this is speculative and unreasoned. As the supposed change in the son's position makes no sense, and there is no statement from him to support it, I should find that it is a fabrication. There is further no evidence that he would not be able to work and earn money outside the appellant's home area, and thus that it would be unduly harsh for the both of them to relocate to another large city in India.

14. Ms A Jones for the appellant argues, in summary, as follows. The appellant could not reasonably relocate in India to another large city such as Mumbai with her adult son because he is not willing to accompany her to provide practical, moral, social and economic support. It was not argued in the reasons for refusal letter that the appellant could reasonably relocate within India with the assistance of her son, instead reference was made to shelters which Mr Clarke concedes now it would not be reasonable for her to have to rely upon. The argument that the appellant's son would relocate with her only arose as an argument before the First-tier Tribunal, and so it is significant that in the 2019 witness statements, made before the First-tier Tribunal hearing, that the appellant said that her son was refusing to have any contact with her and wanted no relationship with her. This position has thus been consistently maintained since this time by the appellant.
15. Ms Jones submits that it is plausible that the appellant's son would take this position as he has had no functional family life with his mother, the appellant, due to the domestic violence she had suffered since before his birth. The appellant had had numerous splits and reconciliations with her husband due to the violence, and her son has had an unstable early life, alternating spending time with his parents and his grandparents. When the appellant left India he was just 13 years old and went to live permanently with his grandparents, and he is now 28 years old. In 2012 in his statement, when he was 20 years old, he said he gave a statement in support of his mother, and said he missed her, but he did not say he was

prepared to move from his home in Gujarat and become responsible for upkeep and care. Nine years later it is plausible given the poor relationship from childhood and the long separation that he wants nothing further to do with her. It is clear from the appellant's evidence that to speak to him she had to call on a neighbour's phone as her son does not want to take her calls. In light of the fragile relationship between the two of them the appellant's evidence is credible that her son will not assist her. As moving with her son is the only way in which internal relocation would not be unduly harsh for the appellant, and given the credible evidence that he is not willing to assist her in this way, the appellant is entitled to succeed in her appeal.

16. At the end of the hearing I reserved my determination of the appeal.

Conclusions - Remaking

17. It is a preserved finding from the First-tier Tribunal that the appellant has suffered serious harm and it is accepted by Mr Clarke that the appellant is at real risk of serious harm from domestic violence from her separated husband in her home area. The parties agreed that the only issue to be determined is whether the appellant could reasonably be expected to relocate internally in India. In this connection Mr Clarke concedes that it would be unduly harsh for the appellant to have relocate as a lone woman given her particular circumstances which include the history of domestic violence, her age, her lack of education, her lack of ever having worked outside of the home and her state of physical and mental ill-health. He argues however that she could be reasonably expected to relocate away from Gujarat to another large city such as Mumbai or Bangalore with her son who is now 28 years old. To determine this appeal I must therefore determine the credibility of the appellant's claim that her son is not willing to assist her in this way.
18. In determining this issue I am guided by what is said in the Upper Tribunal decision of AS (Safety of Kabul) Afghanistan CG UKUT 2020 130, particularly at paragraph 44 of that decision with respect to the application of Article 8 of the Qualification Directive as reproduced at Rule 3390(i) of the Immigration Rules. In summary the assessment of whether someone seeking protection can find safety as it is reasonable for them to internally relocate is a holistic one and a test of great generality, with no factor having inherent priority over another. The task is to assess whether the appellant could lead a relatively normal life without undue hardship in the context of the country concerned. As set out at paragraph 48 of that decision the burden of proof is on the appellant to prove that relocation to the destination identified by the respondent is unduly harsh. The standard of proof is, of course, the lower civil standard, sometimes expressed as a serious possibility.

19. I find that the appellant's relationship with her son is properly described as highly disrupted by the violence of his father. For the first thirteen years of her son's life he moved back and forth living with her parents/his grandparents and then returning to live with the appellant and her husband/his father who violently beat both her and her son, and in addition during this first period of his life the appellant spent five months without him with relatives in the UK trying to get respite from her life of abuse in India. After this time the appellant's son lived with his grandparents in Ahmedabad with regular, if unwelcome due to their threats and violence, visits from his father at least until he finished his education there when he was 21 or 22 years old.
20. In 2012 her son, was aged 20 and a student in the city of Ahmedabad. At this point he said in his statement prepared to support the appellant's asylum application that he missed her a lot but requested that she be allowed to remain in the UK so she could be safe. In 2019 the appellant said in her witness statements prepared for the First-tier Tribunal, and thus prior to that hearing, that her son no longer had a relationship with her and wanted her to stop bothering him. As Ms Jones has submitted this evidence was not submitted in response to a direct contention from the respondent that she could rely upon her son to relocate internally within India as the most said in the reasons for refusal letter was that he was part of her family support. The appellant's evidence has remained consistent since that time, in her oral evidence and updating witness statement.
21. The appellant attributes her son's decision to want nothing to do with her as being based on the influence of her husband, and perhaps fear of what his father might do if it had become known that he had assisted her. It is clear that the appellant's son has now chosen, perhaps in part at least for work as the appellant has given evidence that he is working, to live in the same village, Undhela, as his father where his father makes a living from farming. I do not find that the shift in attitude of the appellant's son is implausible. His father is a violent man who abuses alcohol but he has been a constant in his son's life and now, unlikely in 2012, they are living in the same village and her son is an independent working adult. As Ms Jones has submitted at no point in his 2012 statement did the appellant's son say that he would assist his mother beyond confirming her history of violence and danger as truthful, and I find it plausible after nine years that he might wish no longer to remain in contact with a mother who had left him age 13 years and failed, of course through no fault of her own, to protect him from violence from his father when he was a child, and might side with his father, whom the evidence is that he has continued to permit to visit him as an adult despite his bad behaviour and violence. It is a sad truth that those subjected to a life of violence from a parent may come to see this as part of a parental relationship that they should accept.

22. In considering the credibility of the appellant's evidence that her son wants nothing to do with her, in addition to the consistency and plausibility of the history as noted above, I note that the appellant gave what was potentially unhelpful (to her) evidence about her son's level of education and employment: if she had wanted to dishonestly embellish her claim with respect to the help that her son could offer she would perhaps not have done this, and instead might have said he was uneducated and unemployed. The appellant was also cautious in her evidence: saying that he did not know why her son wanted no more contact, but it might be because of the influence of his father and out of fear of him. These are explanation which make sense in the context of her experience of living in the same village, and in her case house, as her husband, and her own genuine and understandable fear of the man. As Ms Jones has submitted it adds to the credibility of the history that if her son was avoiding contact with the appellant that she had her last conversation with him on a neighbour's phone so he could not simply recognise the number and refuse the call. If the son truly wants nothing more to do with the appellant then he might be likely to refuse to provide a witness statement saying this, and thus it makes sense that the appellant did not think to ring back and request this when he terminated their last call. In any case if such a statement had been produced it might well have been said by the respondent to be self-serving or worthy of little weight.
23. This is an appellant whose history of ill-treatment and serious harm has been believed: it has been found that she has told the truth in relation to key issues in this appeal. This, of course, does not mean she is necessarily telling the truth about everything in her claim, however it is a consideration in her favour. Ultimately when weighing all of the evidence, and considering the lower civil standard of proof to be applied, I am satisfied, when the issue is considered in the round, that the appellant has given truthful credible evidence that her son will not assist her to internally relocate within India given the consistency and plausibility of her evidence, and indications that she has not sought to embellish the picture of her son's life so as to indicate he could not assist for practical reasons and given the finding that she has given truthful evidence about the real risk of serious harm she faces in her home area.
24. It follows that the appellant therefore is at real risk of serious harm if returned to India, and that she cannot avoid this harm by internal relocation within India by relying upon the assistance of her son and that she cannot relocate alone as this is accepted by the respondent as being unduly harsh, and thus that she is entitled to humanitarian protection and not to be returned to India as it would be a breach of her rights as protected under Article 3 ECHR.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal.
3. I re-make the appeal by allowing it on Humanitarian Protection and on Human Rights Grounds.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 16th June 2021

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India born in February 1970. She arrived in the UK as a visitor in June 2006, and overstayed when her leave to enter expired in December 2006. She made an asylum application to regularise her stay in June 2012, this was certified and refused. She made further representations in June 2012, and July 2013 which were refused as a fresh claim in November 2017. A judicial review of that decision resulted in it being withdrawn and a new asylum and human rights decision was made dated 26th November 2018. This appeal is against this decision refusing the appellant's asylum and human rights application. The appeal was dismissed on all grounds in a decision of the First-tier Tribunal Judge PB Conrath dated 24th February 2020
2. Permission to appeal was granted by Judge of the First-tier Tribunal Foudy on the 29th April 2020 on the basis that it was arguable that the First-tier Tribunal had erred in law in finding that the appellant would have sufficiency of protection from the Indian justice system when there was expert evidence to the contrary and without sufficient reasoning to explain why that expert evidence was not accepted, and further by finding that the appellant's adult son would locate away from his father so that the appellant would not be returning to India as a lone woman and thus could reasonably be expected to find safety by way of internal relocation.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law. The hearing was held at a remote Skype for Business hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. Unfortunately, the previous hearing overran so this hearing commenced late. There were then some issues with Ms Jones connecting to the hearing and with me entering the hearing, causing some further delay, perhaps caused by the initial delay in it commencing. Once the hearing started there were no significant problems with connectivity or of any other type.

Submissions - Error of Law

4. In grounds of appeal, drafted by Ms A Jones for the appellant, it is argued, in summary, as follows. The First-tier Tribunal accepted that the appellant had suffered domestic violence from her husband and therefore persecution from a non-state actor. It was accepted that the appellant's husband was a violent man who threatened his

family, and that he had married a second time, and his second wife had also left him due to domestic violence. Further it was accepted that there was a considerable amount of domestic violence in India particularly by men against their wives. However, it was not accepted that the appellant was at real risk of serious harm on return to India. This was because the appellant's husband had once been arrested and detained for one day for his violent conduct, and as such it was found that there was sufficiency of protection and further it was found that the appellant could relocate in India as her adult son now lived independently from his father so she could reasonably go and live with him. The First-tier Tribunal did not, therefore, give weight to the conclusion of the expert, Dr Tran, that she would be at real risk of serious harm on return to India.

5. It is argued that the First-tier Tribunal erred in law by irrationally and/ or without sufficient reasoning concluding that the fact that the appellant's husband was arrested and detained for one day and then released without charge sufficed to show sufficiency of protection, and discounting the expert evidence and that of her son that he did not report his father as he did not believe the police would do anything.
6. It is also argued that it was irrational/ insufficiently reasoned to conclude that the appellant would not be returning to India as a lone woman because she could live with her 27 year old son. The appellant left India when her son was 13 years old and he has ongoing contact with his father who periodically comes to stay with him, and there is no evidence/ reasoning as to why he would move to another area of India to protect his mother given this background.
7. Ms Cunha accepted that there was limited reference to the report of Dr Tran in the decision and that there was limited reasoning with respect to the appellant's son, although this might be explained by the First-tier Tribunal not being provided with much information about him. She argued that if the errors contended for with respect to the reasoning regarding sufficiency of protection and internal relocation were found to be such that the decision should be set aside and remade that it would be appropriate to preserve all of the rest of the findings and remake the matter with submissions only in the Upper Tribunal. She indicated that Ms Jones had agreed with this approach in the event the First-tier Tribunal was found to have erred in law.

Conclusions - Error of Law

8. The respondent conceded that the appellant had a fear of persecution on account of domestic violence from her separated husband (she has never formally divorced) but argued that the appellant did not qualify for international protection as she could relocate internally in India and had sufficiency of protection in that

country, see paragraph 7 of the decision. The First-tier Tribunal concludes that it is correct that she has suffered serious domestic violence and thus persecution, as set out at paragraph 26 of the decision. It was agreed by the parties, as I specifically sought their views so this matter was clear for any remaking hearing, that the position of the First-tier Tribunal was therefore that it was accepted that the appellant was at real risk of further domestic violence, and thus serious harm, from her husband in her home area.

9. The First-tier Tribunal finds that the appellant would have sufficiency of protection however, notwithstanding the conclusion to the contrary of the expert Dr Tran, because the CPIN sets out that the situation in India had improved considerably since the appellant came to the UK in 2006 in this respect, with new laws with tough penalties for domestic violence, and particularly with a new criminal law act in 2013 which provided for new offences and tougher sanctions. The CPIN concludes, as set out at paragraph 25 of the decision, that generally there is sufficiency of protection in India in such circumstances but that an individualised assessment was required to come to a conclusion on the particular facts of any case. It is in this context that the First-tier Tribunal concludes that the fact that when the appellant did seek protection from the police on one occasion and her husband was detained, albeit only for a day, showed that in her particular case it was right to conclude that sufficiency of protection existed. I find that this conclusion is insufficiently reasoned particularly because as the report of Dr Tran deals with issues of effectiveness of this “new” law citing the CPIN at paragraph 2.5.6 which sets out a conviction rate of 18.9% in crimes against women compared to one of 74% in the UK which is attributed to deeply entrenched patriarchal attitudes held by police, lawyers and judicial officers. The decision needed to engage further with the reasoning of Dr Tran and explain why his conclusion was not accepted particularly as he clearly was a suitable expert and had consider the CPIN evidence.
10. The conclusion that the appellant could also be safe by means of internal relocation is based on the fact that it is found by the First-tier Tribunal that there is insufficient evidence that her husband would be interested enough to come looking for her as he last contacted her on the phone 5 or 6 years ago, and India is a large country and she had not shown he had criminal connections that would enable him to find her anywhere in that vast country. It is also found that internal relocation would not be unreasonable as she would not be a “lone woman” as she could live with her son. I find however that there is insufficient reasoning at paragraphs 38 of the decision as to how the appellant could reasonably internally relocate to safety away from her violent husband with her son as there seems to be no findings as to where precisely her son lives in relation to her separated husband, and of the practicalities of her son having sufficient willingness and wherewithal to accommodate

her and relocating away from his father, particularly as the evidence indicated that he lives near to his father in the home area and he accepts it when his father turns up at his home to visit him, and also the appellant does not have a close relationship with her son. As such I find that the conclusion that she would not be returning to India as a lone woman, at paragraph 38 of the decision, is insufficiently reasoned, and in turn it is therefore insufficiently reasoned that the appellant could reasonably be expected to relocate within India.

11. I preserve the findings at paragraphs 27, 28, 29 and the part of 36 which concern the violent history of the appellant's separated husband, his threats to his children, his visit to them and the fact that he would not pose a threat to her outside of her home area. The rest of the findings in the conclusion section at paragraphs 26 to 44 are set aside.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal but preserve some findings as indicated at paragraph 11 above.
3. I adjourn the re-making of the appeal.

Directions

- (i) The remaking hearing will consist of oral submissions only via a Skype for Business hearing on the issues of whether there is sufficiency of protection in India for the appellant and whether it would be reasonable for the appellant to finding safety through internal relocation.
- (ii) Any further documentary evidence relied upon should be filed and served ten days prior to the remaking hearing.

The time estimate is 2 hours.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 8th September 2020